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May 23, 2006

*Via UPS Overnight Mail*

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Re: Variance for Initial Fueling at Automotive Assembly Plants -  
Missouri Rule 10 CSR 10-5.220

Gentlemen:

On May 26, 2005, Mr. Steve Feeler presented to the Missouri Air Conservation Commission a recommendation to approve a variance from the requirements of the Missouri Performance Evaluation Test Procedures (MOPETP) as applied to initial fueling of vehicles at the Missouri automotive assembly plants owned and operated by DaimlerChrysler Corporation ("DCC"), General Motors Corporation ("GM") and Ford Motor Company ("Ford"). All Commissioners voted to grant the variance relief requested by the automakers and recommended by Air Pollution Control Program ("APCP") officials. (A copy of the Commission's Variance Approval Decision and relevant pages of the Commission's 5/26/05 meeting minutes are attached.)

DCC, GM and Ford requested variance relief from the MOPETP requirements potentially applicable to the initial fueling of new vehicles produced at their Missouri vehicle assembly plants, specifically the provisions of 10 CSR 10-5.220(8) "Initial Fueling of Motor Vehicles." The MOPETP requirements are a technical component of the Stage II Vapor Recovery regulations for the St. Louis Metropolitan Area. APCP officials agreed that variance relief would be appropriate given (1) the lack of any quantifiable air quality benefit or additional VOC reductions from MOPETP applicability to initial fill operations; (2) control of initial fueling emissions through new Onboard Refueling Vapor Recovery ("ORVR") technologies is already being implemented as mandated by the federal Clean Air Act; (3) the documented VOC reductions achieved by ORVR systems could be compromised by traditional Stage II controls applied to initial fueling operations; and (4) excessive and unreasonable costs associated with repeating MOPETP compliance testing for the periodic improvements and design changes made to the vehicle fuel delivery and ORVR systems on new vehicles and new models.

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In addition to supporting the requests from DCC, GM and Ford for variance relief from the MOPETP requirements of 10 CSR 10-5.220(8), APCP officials proceeded with a new rulemaking effort to revise the applicability provisions of the rule. Once that rulemaking is completed, the MOPETP requirements will not apply to initial fueling of new motor vehicles at the DCC, GM and Ford assembly plants and the variance relief will no longer be necessary. Unfortunately, that rulemaking is continuing and has not yet been completed.

Because the rulemaking to amend 10 CSR 10-5.220(8) has not been completed, the variance relief granted by the Missouri Air Conservation Commission on May 26, 2005 still is needed by DCC, GM and Ford. Without the variance relief, the automakers would be required to implement the MOPETP testing that the APCP agrees is no longer necessary or appropriate to protect air quality.

To ensure that operations at their Missouri vehicle assembly plants continue in full compliance with all applicable Missouri law and regulations, DCC, GM and Ford respectfully request that APCP officials request that the Commission extend the variance relief granted on May 26, 2005, or initiate another variance proceeding to secure an additional one-year period of variance relief from 10 CSR 10-5.220(8).

We acknowledge that the Commission's May 26, 2005 decision to approve the variance relief requested by DCC, GM and Ford was made effective for a one-year period. Pending Commission action on this request for an extension of the May 26<sup>th</sup> variance relief, DCC, GM and Ford respectfully request that APCP officials exercise enforcement discretion and excuse compliance with the provisions of 10 CSR 10-5.220(8) for initial fueling operations at the automakers' Missouri vehicle assembly plants.

Please contact the undersigned to confirm receipt of this request to continue variance relief from 10 CSR 10-5.220(8) for the initial fueling operations conducted at the Missouri vehicle assembly plants owned and operated by DCC, GM and Ford. If there are any questions or if you need any additional information regarding this request, please contact me at (309) 674-1025. On behalf of DCC, GM and Ford, we appreciate your cooperation and assistance with this matter.

Very truly yours,

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Enclosures

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**Missouri Department of Natural Resources' Recommendation to  
the Missouri Air Conservation Commission on  
Missouri Performance Evaluation Test Procedures (MoPETP)  
Variance Petition and Order**

**Introduction**

Representatives of the automobile manufacturing industry in Missouri have requested an extension to the variance from the Missouri Air Pollution Control Program Regulation 10 CSR 10-5.220, *Control of Petroleum Storage, Loading and Transfer*, as it applies to initial fueling of motor vehicles at automobile assembly plants, issued by the Missouri Air Conservation Commission on May 26, 2005. Section (8) of this rule requires that initial fueling vapor recovery systems located at automotive assembly plants undergo testing per the MoPETP.

Representatives of the automakers have requested relief from these testing provisions. The Missouri Department of Natural Resources supports this request and hereby submits for consideration this variance petition to the Missouri Air Conservation Commission (commission) for its consideration at its meeting on June 29, 2006, pursuant to Section 643.055 and 643.110, RSMo.

**Background**

The department's Air Pollution Control Program has been involved in discussions with Ford Motor Company, General Motors Corporation and Daimler Chrysler Corporation concerning the MoPETP requirements for initial fueling systems at automobile assembly plants.

The existing state regulation, 10 CSR 10-5.220(8), *Control of Petroleum Storage, Loading and Transfer*, requires automakers to document, through MoPETP, that their initial fueling system is: "... maintaining ninety-five percent (95%) efficiency of total capture and emission reduction of the fueling and dispensing operation and the storage tank loading, breathing, and working loss emissions." Automotive assembly plants must custom design their initial fueling systems to meet production needs. The vapor recovery systems associated with these systems undergo frequent changes. In other words, these facilities are not able to use pre-approved equipment and must conduct MoPEPT testing each time their vapor recovery system undergoes certain changes.

The automotive industry presented information detailing the costs of this testing versus the environmental benefit achieved. The cost per ton ratio calculated by the automakers is well beyond any reasonable cost per ton ratio used in other areas of air pollution regulation. The automakers originally presented information to support this variance request at the April 28, 2005 commission meeting.

The Air Pollution Control Program has evaluated the information provided by the representatives of the automakers and supports the request for an extension to the variance from MoPETP testing requirements for initial fueling at automotive assembly plants. The four main reasons the Air Pollution Control Program supports this variance include:

- The automakers have provided information that indicates the cost of the MoPETP for initial fueling is excessive for a minimal emission contributor;

- Emissions are already controlled and will continue to be controlled pursuant to the Clean Air Act, Missouri Air Conservation Law and regulations promulgated thereunder; and,
- Overall, there is an insignificant air quality benefit to MoPETP testing for initial fueling at automobile assembly plants.
- A rule package for a change to 10 CSR 10-5.220 is currently being prepared to make this exemption permanent.

The commission may grant a variance, pursuant to state law (Section 643.055 and 643.110, RSMo), if certain conditions are met. The department has reviewed each of these conditions and compared them with the facts of in this situation. State law authorizes the commission to grant a variance if the person applying for the variance can show that compliance with the rule:

- “would cause economic hardship” (643.055.2(1), RSMo);
- “is physically impossible” (643.055.2(2), RSMo);
- “is more detrimental to the environment than the variance would be” (643.055.2(3), RSMo);
- “is impractical or of insignificant value under the existing conditions” (643.055.2(3), RSMo);
- “will result in taking of property without just compensation” (643.110.1, RSMo); or
- “in the closing and elimination of any lawful business, occupation, or activity, without sufficient corresponding benefit or advantage to the people” (643.110.1, RSMo).

The program believes the automotive industry has adequately shown that the request for variance from MoPETP testing for initial fueling at automobile assembly plants meets the conditions of 643.055.2(3) in that it is impractical or of insignificant value under the existing conditions.

Furthermore, the commission is legally precluded from granting a variance “where the effect of the variance will permit the continuance of a health hazard” (643.110.1, RSMo.) The program believes that granting of this variance extension will not result in a health hazard.

## **Recommendation**

The department recommends that the commission grant an extension to the variance originally issued on May 26, 2005, to Missouri state rule 10 CSR 10-5.220 as it pertains to the MoPETP testing requirements for initial fueling at automobile assembly plants as defined by 10 CSR 10-5.220(1)(B)8. The effect of this variance extension will be to excuse initial fueling systems at automotive assembly plants from MoPETP testing requirements. If this variance extension is granted, it is the intention of the Air Pollution Control Program to continue to work with stakeholders to proceed with the normal rulemaking process to effect this change permanently in the rule. It is furthermore the intention of the program that said rulemaking will not cause any loss of air quality benefits achieved by Missouri state rule 10 CSR 10-5.220. This will be accomplished by ensuring appropriate measures are included in the rule revision to ensure adequate emission control of initial fueling systems at automobile assembly plants.